

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

Add Article 6.5. MEMBERSHIP

Sections 578 and 578.1 to

Title 2 of the California Code of Regulations

ARTICLE 6.5. MEMBERSHIP

§ 578. Scope and Authority.

These regulations interpret the California Public Employees' Retirement Law, Government Code sections 20000 - 21765, by making specific the criteria for employee determinations.

§ 578.1. Determination of "Employee" Status.

(a) For the purposes of the California Public Employees' Retirement Law, and for retirement programs administered by the Board of Administration, CalPERS shall utilize the California common law employment test as set forth in subdivisions (b) and (c), below, to determine whether an individual is "in the employ of" an entity as that phrase is used in Government Code section 20028.

(b) The most important factor in determining employee status is the right of the entity seeking to have the services performed to control the manner and means of accomplishing the result desired, regardless of whether that right is exercised with respect to all details.

(c) The other factors to be taken into consideration are:

- (1) Whether or not the individual performing the services is engaged in a distinct occupation or business.
- (2) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the entity seeking to have the services performed without supervision.
- (3) The skill required in the particular occupation.
- (4) Whether the entity seeking to have the services performed, or the individual performing the services, supplies the instrumentalities, tools and the place of work for individual performing the services.
- (5) The length of time for which the services are performed.
- (6) The method of payment, whether by the time or by the job.
- (7) Whether or not the work is part of the regular business of the entity seeking to have the services performed.

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- (8) Whether or not the parties believe they are creating the relationship of employer and employee.
- (d) If the California Public Employees' Retirement System determines, based on the factors listed in subdivisions (b) and (c), above, that the individual does not have employee status, then the individual is not eligible for membership in the California Public Employees' Retirement System for those services.

NOTE: Authority cited: Sections 20120, 20121 and 20125, Government Code.

Reference: Sections 20028; 20030, 20069; 20125; 20281; 20283; 20284; 20300, subdivision (b); 20370; 20460; 20502; Government Code; *Metropolitan Water District of Southern California v. The Superior Court of Los Angeles County (Cargill)* (2004) 32 Cal.4th 491; *Tieberg v. Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943; and *In the Matter of the Application for CalPERS Membership Credit by Lee Niedengard and Tri-Counties Association for the Developmentally Disabled* (CalPERS Precedential Decision No. 05-01, effective April 22, 2005.)